

DEC 22 2010

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

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|-----------------------------------|---|-------------------------------------|
| CARROLL E. WADE,                  | ) | Civil Action No. 7:10-cv-00558      |
| Plaintiff,                        | ) |                                     |
|                                   | ) |                                     |
| v.                                | ) | <u>MEMORANDUM OPINION</u>           |
|                                   | ) |                                     |
| STANLEY K. YOUNG, <u>et al.</u> , | ) | By: Hon. James C. Turk              |
| Defendant.                        | ) | Senior United States District Judge |

Plaintiff Carroll E. Wade, a Virginia inmate proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 with jurisdiction vested in 28 U.S.C. § 1343. Plaintiff names as defendants Stanley K. Young, Warden of the Pocahontas Correctional Center; David Hammond, Treatment Program Supervisor; Fairley E. Lockhart, a Building Manager; Jackie Bandy, a Hearings Officer; and Michelle Saunders, a Building Sergeant. This matter is before the court for screening, pursuant to 28 U.S.C. § 1915A. After reviewing plaintiff's submissions, the court dismisses the complaint without prejudice for failing to state a claim upon which relief may be granted.

The court must dismiss any action or claim filed by an inmate if the court determines that the action or claim is frivolous or fails to state a claim on which relief may be granted. See 28 U.S.C. §§ 1915(e)(2), 1915A(b)(1); 42 U.S.C. § 1997e(c). The first standard includes claims based upon "an indisputably meritless legal theory," "claims of infringement of a legal interest which clearly does not exist," or claims where the "factual contentions are clearly baseless." Neitzke v. Williams, 490 U.S. 319, 327 (1989). The second standard is the familiar standard for a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), accepting the plaintiff's factual allegations as true. A complaint needs "a short and plain statement of the claim showing that the pleader is entitled to relief" and sufficient "[f]actual allegations . . . to raise a right to

relief above the speculative level . . . .” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal quotation marks omitted). A plaintiff’s basis for relief “requires more than labels and conclusions . . . .” Id. Therefore, the plaintiff must “allege facts sufficient to state all the elements of [the] claim.” Bass v. E.I. Dupont de Nemours & Co., 324 F.3d 761, 765 (4th Cir. 2003).

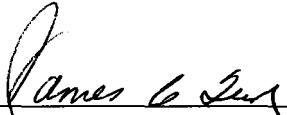
However, determining whether a complaint states a plausible claim for relief is “a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” Ashcroft v. Iqbal, \_\_ U.S. \_\_, 129 S. Ct. 1937, 1950 (May 18, 2009). Thus, a court screening a complaint under Rule 12(b)(6) can identify pleadings that are not entitled to an assumption of truth because they consist of no more than labels and conclusions. Id. Although the court liberally construes pro se complaints, Haines v. Kerner, 404 U.S. 519, 520-21 (1972), the court does not act as the inmate’s advocate, sua sponte developing statutory and constitutional claims the inmate failed to clearly raise on the face of his complaint. See Brock v. Carroll, 107 F.3d 241, 243 (4th Cir. 1997) (Luttig, J., concurring); Beaudett v. City of Hampton, 775 F.2d 1274, 1278 (4th Cir. 1985). See also Gordon v. Leeke, 574 F.2d 1147, 1151 (4th Cir. 1978) (recognizing that district courts are not expected to assume the role of advocate for the pro se plaintiff).

To state a claim under § 1983, a plaintiff must allege “the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” West v. Atkins, 487 U.S. 42, 48 (1988). However, plaintiff fails to describe any claim against the defendants more than his use of legal conclusions about the defendants’ unknown alleged acts. Plaintiff merely claims that the

“[d]efendants violated state and U.S. Constitutional [r]ights of Plaintiff’s . . . . under color of state law. . . .” (Compl. 2.) Without any additional facts, the court is am unable to consider a § 1983 claim or otherwise grant plaintiff’s requested relief of unspecified damages. Accordingly, the court dismisses the complaint without prejudice, pursuant to 28 U.S.C. § 1915A(b)(1), for failing to state a claim upon which relief may be granted and denies as moot the remaining motions. Plaintiff may refile his complaint in a new and separate action at the time of his choice by filing a new complaint with the requisite details.

The Clerk is directed to send copies of this memorandum opinion and the accompanying order to the plaintiff.

ENTER: This 22<sup>nd</sup> day of December, 2010.

  
\_\_\_\_\_  
Senior United States District Judge